

Case No. _____

IN THE SUPREME COURT OF NEVADA

HARVEST MANAGEMENT SUB LLC,
Petitioner,

Electronically Filed
Apr 18 2019 01:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
CHIEF JUDGE,

Respondent,

- and -

AARON M. MORGAN and DAVID E. LUJAN,
Real Parties in Interest.

District Court Case No. A-15-718679-C, Department VII

**APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 14 OF 14**

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April 18, 2019

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 14 OF 14

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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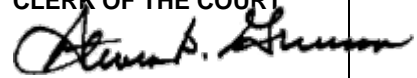
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TAB 34

TAB 34



SUPPL

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HARVEST MANAGEMENT SUB LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

AARON M. MORGAN, individually,

Plaintiff,

vs.

DAVID E. LUJAN, individually; HARVEST
MANAGEMENT SUB LLC; a Foreign-Limited-
Liability Company; DOES 1 through 20; ROE
BUSINESS ENTITIES 1 through 20, inclusive
jointly and severally,

Defendants.

Case No. A-15-718679-C

Dept. No. VII

**SUPPLEMENT TO HARVEST
MANAGEMENT SUB LLC'S MOTION
FOR ENTRY OF JUDGMENT**

Hearing Date: March 5, 2019

Hearing Time: 9:00 a.m.

During the hearing of Defendant Harvest Management Sub LLC's ("Harvest") Motion for Entry of Judgment, the Court requested transcripts of the settling of the jury instructions from the second trial in April 2018. Attached hereto, and as set forth below, are copies of the relevant transcript excerpts concerning the settling of jury instructions and the finalizing of the special verdict form:

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- On April 4, 2018¹, at pages 3:2-4:20, the Court and the Parties discussed a possible jury instruction regarding the first trial. The Court requested that Plaintiff's counsel submit a proposed instruction in writing.
- On April 4, 2018, at pages 45:1-46:7, the Court and the Parties discussed the fact that the jury instructions were settled during the first trial. The Court informed the Parties that it no longer had the instructions settled upon at the first trial and that a new set of proposed instructions should be submitted by the Parties. The Court also instructed the Parties that any objections raised to proposed instructions during the first trial would need to be asserted again.
- On April 4, 2018, at page 152:3-6, the Court informed the Parties that it would provide them with a new set of proposed instructions.
- On April 6, 2018,² at pages 56:18-58:25, the Court provided the Parties with a complete set of the proposed jury instructions. Plaintiff's counsel again stated that it wanted to include a proposed instruction relating to the first trial, and the Court instructed Plaintiff's counsel to submit the proposed instruction in writing. Finally, the Court informed the Parties that a reference to past and future vocational loss should be removed from Instruction No. 20, because there was no wage loss claim in the case.
- On April 6, 2018, at page 100:1-108:5, the Court and the Parties settled the jury instructions. The Court went through every proposed instruction, and there were no proposed instructions as to either negligent entrustment or vicarious liability. The Parties revised Instruction No. 13, because there were no Requests for Admission in this case. The Court decided to include Plaintiff's proposed instruction regarding the first trial. There was brief discussion about the instruction concerning the playback or re-reading of a witness's testimony. The Court specifically inquired as to whether the Parties had any other proposed instructions, and both Parties acknowledged that they

¹ A true and correct copy of excerpts from the April 4, 2018 Transcript of Jury Trial are attached as Exhibit 1.

² A true and correct copy of excerpts from the April 6, 2018 Transcript of Jury Trial are attached as Exhibit 2.

1 did not. Both Parties also acknowledged that they had no other objections for the
2 record. Finally, the Court informed the Parties that it had a sample special verdict
3 form from a recent trial that could be used.

- 4 • On April 6, 2018, at pages 206:20-207:6, the Court provided the Parties with the final
5 set of jury instructions.
- 6 • On April 9, 2018,³ at pages 3:11-4:2, the Court confirmed that it had provided the
7 Parties with a complete set of the final jury instructions, and it was discovered that the
8 verdict form had been mistakenly omitted from this set.
- 9 • On April 9, 2018, at pages 5:20-6:2, the Court provided the Parties with a sample
10 special verdict from another recent trial. The Court informed the Parties that the
11 caption was incorrect and that it may not be correct as to the damages being sought,
12 but asked if the form looked “okay.”
- 13 • On April 9, 2018, at page 116:7-24, Plaintiff’s Counsel informed the Court that it
14 wanted to make one change to the special verdict form. Plaintiff’s counsel requested
15 that past and future medical expenses and past and future pain and suffering be split
16 up as separate categories of damages. That was the only revision requested, and the
17 Court approved the revision.
- 18 • On April 9, 2018, at page 117:3-24, there was an objection lodged to Jury Instruction
19 No. 26, regarding the Court’s prior ruling on a motion for summary judgment.

20 DATED this 5th day of March, 2019.

21 BAILEY❖KENNEDY

22
23 By: /s/ Dennis L. Kennedy
24 DENNIS L. KENNEDY
25 SARAH E. HARMON
26 ANDREA M. CHAMPION

27 *Attorneys for Defendant*
28 HARVEST MANAGEMENT SUB LLC

3 A true and correct copy of excerpts from the April 9, 2018 Transcript of Jury Trial are attached as Exhibit 3.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 5th day of March, 2019, service of the foregoing **SUPPLEMENT TO HARVEST MANAGEMENT SUB LLC'S MOTION FOR ENTRY OF JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EXHIBIT 1

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

AARON MORGAN,
Plaintiff,
vs.
DAVID LUJAN
Defendant.

CASE#: A-15-718679-C
DEPT. VII

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
JUDGE

WEDNESDAY, APRIL 4, 2018
RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL

APPEARANCES:

For the Plaintiff: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

For the Defendant: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER


1 Las Vegas, Nevada, Wednesday, April 4, 2018

2 MR. CLOWARD: The first thing is the prior trial, in the event
3 that that comes up, we feel like there should be some sort of an instruction
4 that you could give the jurors now. Just, hey, there was a prior trial, you
5 know, that something happened and, you know, this is the second time or
6 something. I mean, we don't want to indicate that there was anything
7 negative.

8 THE COURT: Generally, how I have handled that in the past
9 on the few occasions this has come up is to just simply say you previously
10 testified in this matter. I mean, we have got this [indiscernible] testimony as
11 well, and so we treat it really kind of like deposition testimony because
12 obviously you're entitled to impeach someone if they something different
13 than they did in their testimony in the first trial. But if you just say you
14 testified in this matter previously, I don't think that it is necessary to get into
15 any particular detail about that further than that.

16 MR. CLOWARD: Yeah. I guess a concern that we would have
17 is that if the jurors think that, you know, Aaron's already collected on this and
18 that this is just a second lawsuit kind of a thing which, you know, that
19 wouldn't be accurate. And so we'd hoped to get just a simple instruction
20 that, you know, we had a -- there's a reason we give these instructions. In
21 that case, there was an issue -- or in that trial there was an issue and so this
22 is the second trial on this matter, it's still not complete, and that's it.

23 And then, if we get into the whole prior trial thing, there won't be
24 the jurors thinking that there was some sort of conclusion for one side or the
25 other.



1 THE COURT: Well I just don't know why we could into the
2 whole prior trial thing at all, Mr. Cloward. I mean, can't we just --

3 MR. GARDNER: I don't -- yeah. In fact, I don't mean to bring
4 up the prior trial. We could call it sworn testimony if we want to refer to the
5 trial transcript -- just as sworn testimony.

6 THE COURT: It would be very similar to the way that we
7 handle it when somebody makes a sworn statement to an insurance
8 adjuster. We don't say it's a sworn statement to an insurance adjuster, we
9 just say you gave a statement in this case previously.

10 MR. BOYACK: It was brought up yesterday.

11 UNIDENTIFIED SPEAKER: Yeah, twice yesterday, they said --

12 MR. CLOWARD: Yeah, it was brought up, plus --

13 UNIDENTIFIED SPEAKER: -- prior trial.

14 MR. CLOWARD: -- I believe that it's possible --

15 THE COURT: All right. Well if you want to draft an instruction,
16 I'm happy to look at Mr. Cloward.

17 MR. CLOWARD: Okay. Will you do that, Bryan.

18 MR. BOYACK: Yep.

19 MR. CLOWARD: Thanks. And thank you, Your Honor, for that
20 consideration.

21 And a couple of other things. The first trial that we had, there
22 was no discussion of liens or health insurance. I just assumed that that was
23 because the case law, the *Pizarro* case at 133 Nev. Adv. Op., talks about
24 how, you know, if a lien is recourse versus non-recourse, the relevance is
25 really minimal.

1 THE COURT: I have at least an initial draft set of instructions. I
2 still don't have any instructions from the Defense. Mr. Rands?

3 MR. RANDS: Your Honor, in the last trial, I think we settled the
4 instructions.

5 THE COURT: I understand, but I don't have them. I didn't keep
6 them from the last trial.

7 MR. BOYACK: Yeah, we're working on them.

8 THE COURT: And I don't have them. As I mentioned the first
9 day, my assistant retired and so I don't have access to her [indiscernible] so
10 I don't have them.

11 MR. RANDS: Counsel gave me his set. I'm going to compare it
12 with mine. I think we've got it pretty much settled.

13 THE COURT: Well the set you provided me was missing some,
14 like, critical instructions, so.

15 MR. BOYACK: We know. We know, and I understand. The
16 copies that were emailed were incorrect.

17 THE COURT: Okay. Well just get me whatever because I
18 would like to get those finalized.

19 MR. RANDS: I got his set this morning. I'll compare it with
20 ours --

21 THE COURT: That's the draft that I have currently.

22 MR. RANDS: -- and I think we've got them settled.

23 THE COURT: Okay. Well, great.

24 MR. RANDS: So rather than give you ours and then have to
25 deal with --



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THE COURT: Well, if there's any -- the other thing is if there are any that there were objections to or whatever last time, they're not going to be in the record. So if there's any that you want that you are not agreeing on, I need those, too.

MR. RANDS: Okay.

THE COURT: So we basically just need to redo it.

MR. RANDS: Will do.

[Recess at 12:16 p.m.]

THE MARSHAL: Please rise for the jury.

[Jury in at 1:47 p.m.]

THE MARSHAL: Please be seated.

THE COURT: We're back on the record in Case number A718679, Morgan versus Lujan. Let the record reflect the presence of all of our jurors, counsel, and parties.

Mr. Cloward, I'm sorry, go ahead, please.

MR. CLOWARD: No problem. Thank you, Your Honor.

BY MR. CLOWARD:

Q So, Dr. Muir, if you'll kind of I guess just kind of we'll go through -- I think the last question was kind of the thought process in arriving to the ultimate conclusions that you have today and so forth.

A Certainly. On the cervical spine, in summary, based upon the patient's symptoms of a sharp stabbing pain, which is consistent with joint, based upon the hypermobility at C5-C6, based upon the physical examination of extension being more painful than flexion, which is consistent with a joint problem, based upon the symptoms of -- of referred pain in the

1 I'm hoping not to have everybody waiting today -- like they were today.

2 So I did find the --

3 MR. CLOWARD: Instructions?

4 THE COURT: Yeah. I did find those, so I'll go through those
5 again and get you a new -- you can just recycle whatever I gave you. I'll
6 go through and give you a new set.

7 MR. GARDNER: Your Honor, I hope I didn't make a big
8 mistake. I've been telling a couple of my witnesses Monday. Should I
9 not do that?

10 THE COURT: My hope was to finish this by Friday, but I
11 know that we are behind. So I don't know the answer to that. I mean,
12 we'll see. We have Dr. Cash --

13 And how long is Dr. K -- I'm never going to get her name.

14 MR. CLOWARD: Kittusamy.

15 THE COURT: Yeah. Never going to get it.

16 MR. CLOWARD: Well, the concern is, is that we were -- we
17 wanted to get Dr. Coppel yesterday.

18 THE COURT: Right.

19 MR. CLOWARD: So he got pushed 'til tomorrow. We're
20 going to -- it's going to be a heavy, heavy lift, but we're going to try to get
21 all three of those doctors done.

22 THE COURT: Okay.

23 MR. CLOWARD: Which will mean that we'll have to finish
24 Aaron on Friday.

25 THE COURT: Okay.

EXHIBIT 2

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

AARON MORGAN,
Plaintiff,
vs.
DAVID LUJAN
Defendant.

CASE#: A-15-718679-C
DEPT. VII

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
JUDGE

FRIDAY, APRIL 6, 2018
RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL

APPEARANCES:

For the Plaintiff: BRYAN BOYACK, ESQ.
BENJAMIN CLOWARD, ESQ.

For the Defendant: DOUGLAS GARDNER, ESQ.
DOUGLAS RANDS, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Tell me your plan.

2 Oh, there it is.

3 MR. GARDNER: Well, we pushed our experts to Monday. I
4 can call them to see if we can get them here today, but I don't know if we
5 can do that. But I do intend to call the Plaintiff and Erica, and then our
6 accident reconstructionist and our doctor. But --

7 THE COURT: Mr. Gardner, I told you two days ago to have
8 them here today.

9 MR. GARDNER: I'm sorry, I misunderstood.

10 THE COURT: I mean, I --

11 MR. GARDNER: I'll see if I can get them.

12 THE COURT: Because, I mean, we knew that they were going
13 to finish in the morning today.

14 MR. GARDNER: I'll contact them, Your Honor.

15 THE COURT: All right. All right, folks. 10:30.

16 MR. CLOWARD: Okay. Thanks.

17 [Recess at 10:25 a.m.]

18 THE COURT: Did you both get -- I had put them up here but I
19 didn't tell you -- the new set of jury instructions.

20 MR. RANDS: I grabbed those and distributed them yesterday.

21 THE COURT: Right. Thank you, Mr. Rands.

22 MR. RANDS: [Indiscernible].

23 THE COURT: So it is not exactly what we had decided upon
24 before. There was just a couple of additional instructions and they're
25 reordered just a hair. But I incorporated what -- there were a few

1 instructions from the set from --
2 MR. CLOWARD: Than last night?
3 THE COURT: Yeah.
4 MR. CLOWARD: Okay.
5 THE COURT: So -- that I had incorporated. So just if there's
6 any additional instructions that anybody intends to propose, let me know.
7 MR. CLOWARD: I think there's one instruction that we wanted
8 to propose just regarding that -- the trials.
9 THE COURT: That's fine. So just make sure that you get it --
10 you get it emailed to me.
11 MR. RANDS: Yeah, I've gotten a copy of their -- and we've
12 talked a little bit with Bryan before about that. But now you've brought the
13 other one up, so I guess we're going to have to have them both.
14 THE COURT: So just make sure I get -- if you could get them
15 in writing to me, because I would like to go --
16 MR. CLOWARD: Do you have it in writing?
17 MR. RANDS: The only other issue was to --
18 THE COURT: -- through them maybe around lunchtime.
19 MR. CLOWARD: Your Honor, I have a handwritten --
20 THE COURT: That'll work.
21 MR. CLOWARD: -- apparently from Mr. Boyack.
22 MR. BOYACK: Yes.
23 MR. CLOWARD: Because Mr. Boyack's --
24 THE COURT: We'll see how Mr. Boyack's writing is.
25 MR. CLOWARD: Ask him to type it up.

1 MR. BOYACK: Well --

2 MR. RANDS: Instruction Number 20, Your Honor --

3 MR. CLOWARD: I'm throwing you under the bus.

4 MR. RANDS: Instruction Number 20 also has past and future
5 vocational loss --

6 THE COURT: Oh, I thought I fixed that.

7 MR. RANDS: I'm going to go find Mr. Gardner. I'll be right
8 back.

9 THE COURT: Oh, I see. You know what? It's -- it was an
10 editing error on my part. I circled it, but I didn't cross it out so --

11 MR. BOYACK: Oh, okay.

12 THE COURT: So my assistant would have had

13 MR. BOYACK: Number 29?

14 THE COURT: -- no way to figure out what I was trying to do
15 there.

16 MR. BOYACK: On Number 29 that --

17 THE COURT: Yeah.

18 MR. BOYACK: Okay, perfect.

19 THE COURT: I just -- I screwed it up.

20 MR. BOYACK: Well, we're all --

21 THE COURT: I knew I was taking it out, I just --

22 MR. BOYACK: Ben's pointed out my screw-ups, plenty of
23 those.

24 THE COURT: I wasn't very clear on that.

25 Do you want to get them back in?

1 THE MARSHAL: Please rise for the jury.

2 [JURY IN AT 10:35 A.M.]

3 THE MARSHAL: Please be seated.

4 THE COURT: Back on the record in case number A718679,
5 Morgan versus Lujan. [Indiscernible] present, all of our jurors present.

6 All right. Mr. Gardner, please call your first witness.

7 [PAUSE]

8 [COUNSEL CONFER]

9 THE COURT: All right. Sir, come back on up, please. Go
10 ahead and have a seat. Having been previously sworn, I'll remind you that
11 you are still under oath.

12 Mr. Gardner, whenever you are ready.

13 **AARON MORGAN**

14 [having been called as a witness and having been previously sworn, testified
15 further as follows:]

16 **DIRECT EXAMINATION**

17 BY MR. GARDNER:

18 Q Hello, Aaron.

19 A Hello.

20 Q We meet again.

21 A Yes.

22 Q I don't know why you left at -- watching your girlfriend testify.

23 Every man in America would like to see his wife or girlfriend up on the stand
24 like that. You can find out a lot of information.

25 But where are you working now?

2397

1 come back at -- you know what? I'm going to send the jury out to do
2 the instructions right now and then come back at 12:45. Yeah, so
3 that's what I'll do.

4 MR. GARDNER: Okay.

5 MR. CLOWARD: So come back at 12:45?

6 THE COURT: We're going to break for lunch and let's
7 have the jury come back at 12:45, but we're going to do the jury
8 instructions right now --

9 MR. CLOWARD: Oh, yeah.

10 THE COURT: -- so we're going to take five, ten minutes.

11 MR. CLOWARD: Good idea. Thanks.

12 THE COURT: All right.

13 [Bench conference ends at 11:33 A.M.]

14 THE COURT: All right, folks. We're going to go ahead
15 and break for lunch. During this break you are admonished not to talk
16 or converse among yourselves or with anyone else on any subject
17 connected with this trial or read, watch or listen to any report of or
18 commentary on the trial or any person connected with this trial by any
19 medium of information, including without limitation, newspapers,
20 television, the Internet and radio or form or express any opinion on
21 any subject connected with the trial until the case is finally submitted
22 to you. Remind you not to do any independent research. We're going
23 to come back at 12:45.

24 THE MARSHAL: Please rise for the jury.

25 [Jury out at 11:33:30 A.M.]

1 THE COURT: All right, folks. Let's just run through the
2 jury instructions here real quick. So, all right. We have Number 1, it
3 is now my duty as judge. Also, I have probably changed the -- I know
4 we had a set. We've had some different things. There may be just
5 some minor changes to remove pronoun references in the instructions.
6 I don't give that masculine or feminine instruction that was submitted
7 in the second group. So and if you happen to see something that
8 isn't, let me know. Somehow those pronouns sneak their way into the
9 instructions. But I think that they're in pretty good shape in that
10 regard.

11 So 1 is it is now my duty as judge;
12 2, if in these instructions any rule, direction or idea;
13 3, if during this trial I have said or done anything;
14 4 was not submitted at any point in this case, but it's an
15 instruction we generally give, the sympathy --

16 MR. CLOWARD: Yeah, that's fine. Fine with me.

17 THE COURT: Do you want -- is everybody fine with that?

18 MR. CLOWARD: Yeah.

19 MR. GARDNER: Yeah.

20 MR. RANDS: There's a spot that usually has that in there.

21 MR. GARDNER: Yeah, that's fine.

22 THE COURT: Yeah. It just wasn't. For whatever reason,
23 it wasn't.

24 MR. GARDNER: Okay.

25 THE COURT: 5, one of the parties in the case is a

1 corporation.

2 MR. RANDS: Okay. I must have the wrong set.

3 THE COURT: Yeah, I apologize. We've had a few
4 different.

5 MR. CLOWARD: I had my four exhibit binders that I've
6 been -- so we just reprint them many times, and I have notes in --

7 MR. RANDS: Mine was --

8 THE COURT: One of the parties in this case is a
9 corporation;

10 6 was not included by anyone, but I would like to give it
11 and it's just you can't communicate with anybody by any electronic
12 means until the verdict's returned.

13 MR. CLOWARD: Yeah, we're happy with that. Good.


14 THE COURT: 7, you must decide all questions of fact from
15 this case. The instruction submitted did not have the last line that
16 says "including the Internet or other online services." I assume
17 everybody's fine with that.

18 8, although you are to consider only the evidence in
19 reaching a verdict;

20 9, the evidence which you are to consider. This instruction
21 was submitted with the line "if the parties stipulate to the existence of
22 a fact you must accept that." That's actually a separate instruction so
23 I removed that line.

24 10, there are two kinds of evidence, direct and
25 circumstantial;

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1 11, in determining whether any proposition has been
2 proved;

3 12, if the parties -- if Counsel for the parties have
4 stipulated to any fact.

5 And then 13 is the deposition interrogatory request for
6 admission instruction, so I don't -- I can't recall if there's been any
7 reference to an interrogatory request for admission.

8 MR. RANDS: Interrogatory request for admission --

9 MR. CLOWARD: We did the rogs, not the RFAs, though,
10 the rogs.

11 THE COURT: So you want me to strike the last
12 paragraph?

13 MR. RANDS: Yeah.

14 THE COURT: All right.

15 MR. GARDNER: Sure.

16 MR. CLOWARD: Yeah.

17 THE COURT: 14, the credibility or believability of a
18 witness;

19 15, discrepancies in a witness's testimony;

20 16, an attorney Has a right to interview a witness;

21 17, a person who has specialized knowledge, skill,
22 experience;

23 18, a question has been asked;

24 19, an expert witness has testified;

25 20, whenever in these instructions I state that the burden;

1 21, the preponderance or weight of evidence;
2 22, the Plaintiff seeks to establish liability in a claim of
3 negligence;
4 23, the Plaintiff has the burden to prove;
5 24, when I use the word "negligence";
6 25, a proximate cause;
7 26, it has already been determined. All right. You know
8 what? We have this instruction about the prior trials. I would probably
9 put it in -- the next in line just --
10 MR. RANDS: Okay.
11 THE COURT: -- since there's some specific information
12 there. I don't know that there's a great place to put this anywhere,
13 but --
14 MR. BOYACK: Correct. No, I think --
15 THE COURT: All right. So this is the instruction that's
16 proposed by the Plaintiff. There have been two prior trials previously
17 held in this matter. The first trial was set in April 2017 but needed to
18 be rescheduled on the first day for an emergency; the second trial was
19 in November 2017 and lasted for three days but was not completed
20 and no verdict was reached. You should not make any opinions or
21 conclusions based on the fact that prior trials were held -- were held in
22 this case. All right. Any objection from the --
23 MR. RANDS: Well, I kind of objected to it -- not objected
24 to it. We talked beforehand that I didn't think it was necessary to put
25 that first issue in, but then I guess Mr. Cloward did raise that in his --

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1 THE COURT: All right. So I'm going to go ahead and give
2 that as -- we'll make that 27.

3 MR. RANDS: Okay.

4 THE COURT: The next is Plaintiff may not recover
5 damages. It's the comparative negligence instruction. I'm going to
6 make that 28.

7 MR. RANDS: Uh-huh.

8 THE COURT: You are not to discuss or even consider,
9 make that 29. Oh, wait. Wait, wait, wait. I might not have gotten to it
10 yet. Let me see. Ah.

11 In determining the amount of losses, I would make that 30,
12 and then I'm going to take out that three.

13 MR. CLOWARD: Okay.

14 THE COURT: That was just my missed error and how I
15 edited it. I circled it instead of crossed it out.

16 31, no definite method or standard of calculation;

17 32, if you find Plaintiff suffered injuries;

18 33, according to the table of mortality;

19 34, whether any of these elements have been proven;

20 35, the Court has given you instructions;

21 36, if during your deliberation --

22 MR. RANDS: Just as a side note, in addition to issues that
23 I don't like with the jury questions, this is another one I don't like
24 because it kind of gives them the idea that they may be able to do it.

25 THE COURT: You know what? Actually, Mr. Rands, that's

2403

1 not my experience. The one time we did not -- the one time that I
2 didn't give this instruction -- we've never had a jury ask for a playback,
3 except for the one time we didn't --

4 MR. RANDS: Didn't do it? Okay.

5 MR. CLOWARD: And then they asked for it?

6 THE COURT: Then they asked for a bunch of stuff. So, I
7 mean, I think telling them, like, we don't encourage that is, at least in
8 my experience, that's been helpful and doesn't give them ideas,
9 because when we didn't tell them they definitely got ideas.

10 MR. RANDS: They did it. Okay. Mine's different, but, you
11 know, I think sometimes when you put it in their mind they think, oh,
12 yeah, we could -- we might get a reading.

13 THE COURT: 37, it is your duty as jurors;
14 38, when you retire to consider your verdict, and;
15 39, now you will listen.

16 Are there any other proposed instructions that the Court
17 has not considered?

18 MR. CLOWARD: No, Your Honor.

19 MR. RANDS: Not from the Defense, Your Honor.

20 THE COURT: Okay. Any objections that have not been
21 placed on the record?

22 MR. RANDS: Nope.

23 THE COURT: Great. So we'll get -- I'll get those couple
24 changes made and then we'll get you, each side, a final set after
25 lunch.

1 MR. RANDS: A clean set. Okay. Thank you.

2 THE COURT: And then I don't know if I have a verdict
3 form or not, but since this is like my sixth car accident trial in a row, I
4 have one from last year that will work great for this, I will just note
5 that.

6 MR. CLOWARD: That would be perfect.

7 THE COURT: We'll put that together and then --

8 MR. RANDS: Will it -- it will include a comparative?

9 THE COURT: Yeah.

10 MR. RANDS: Okay.

11 THE COURT: This is my sixth car accident trial since the
12 beginning of the year, and two of them were two weeks long.

13 MR. RANDS: Really?

14 MR. CLOWARD: Geez.

15 THE COURT: Okay. So --

16 MR. RANDS: Was Mr. Cloward involved in those?

17 THE COURT: You didn't have any of the ones that we had
18 this year, have you --

19 MR. CLOWARD: That was last year.

20 THE COURT: That was last year.

21 MR. CLOWARD: Last year.

22 THE COURT: It's been different lawyers in every single
23 one.

24 MR. RANDS: Really?

25 THE COURT: So I had Mr. Prince and I had -- they really

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1 just all blur together. It's awful. I can't remember. But, no, not Mr.
2 Cloward.

3 MR. CLOWARD: All right. Thank you, Your Honor.

4 MR. RANDS: Thanks, Judge.

5 THE COURT: All right.

6 [Recess at 11:44 A.M.]

7 [Outside the presence of the jury]

8 MR. GARDNER: Your Honor, I do have a witness coming. I
9 expected him about 10 minutes ago. Could we -- I know it's asking a lot,
10 but --

11 THE COURT: Well, yeah. Just have them hold off.

12 THE MARSHAL: Okay.

13 THE COURT: Yeah.

14 MR. GARDNER: Thank you. Appreciate that.

15 [Pause]

16 MR. GARDNER: In fact, if it would be all right, I'll go out and
17 wait for him, so he --

18 THE COURT: Yeah.

19 MR. GARDNER: -- comes in the right place. Oh. He's right
20 there.

21 THE COURT: Right.

22 [Pause]

23 MR. GARDNER: Your Honor, he's here.

24 THE COURT: All right.

25 [Pause]

1 THE COURT: All right, folks. So here is our plan. We have a
2 doctor who's scheduled to come at 9:00 on Monday morning. At this point,
3 the parties can obviously change their minds because we're not done with
4 the case, but at this point I anticipate that will be our last witness unless
5 something happens. We'll finish up with the doctor's testimony. I would
6 anticipate that I would then read you the jury instructions. We'll break for
7 lunch, and then have closings immediately after lunch tomorrow and get you
8 the case to deliberate by midafternoon. So we'll reconvene Monday at 9:00
9 a.m.

10 During this break you are admonished not to talk or converse
11 among yourselves or anyone else on any subject connected with this trial, or
12 read, watch, or listen to any report or commentary on the trial or any person
13 connected with this trial by any media information including, without
14 limitation, newspapers, television, internet, and radio or form or express any
15 opinion on any subject connected with the trial until the case is finally
16 submitted to you. I remind you to not do any research. Everybody have a
17 good weekend, we'll see you Monday.

18 THE MARSHAL: Please rise.

19 [Jury out at 4:20 p.m.]

20 THE COURT: Mr. Boyack?

21 MR. BOYACK: Yes.

22 THE COURT: I have final sets of instructions I'm just going to
23 give you. One for Mr. Gardner, one for you.

24 MR. BOYACK: Thank you.

25 THE COURT: This is mine.

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1 MR. BOYACK: This is the new set of instructions.

2 THE COURT: That's the final set. So if you have any other
3 ones, get rid of them. All right, anything else we need to take care of this
4 evening?

5 UNIDENTIFIED SPEAKER: No, Your Honor.

6 MR. GARDNER: No, Your Honor.

7 MR. CLOWARD: Thank you, Judge. Well, I think he probably
8 said enough. But I would just say I'm not sure whether Dr. Baker stated his
9 opinions to a reasonable degree of probability. But I don't know. I just, I'm
10 not moving to strike or anything, I'm just --

11 THE COURT: All right. I wasn't entirely clear on that myself,
12 Mr. Cloward. But I mean, I think he --

13 MR. CLOWARD: I would be curious to review the transcript.
14 But I think he kind of --

15 THE COURT: Well, what he said was can you tell me what that
16 means. And then he said that they were -- that he used methods that were
17 generally accepted in his field, which to me is the same thing. Yes, I mean,
18 he didn't use the magic language that, you know, the magic legal language.
19 But I think that what he said afterwards was really the same thing, that it
20 was, you know --

21 MR. CLOWARD: Okay. Can we leave the boards here?

22 THE COURT: Oh yes, you can leave everything. Nothing's
23 going to happen here over the weekend.

24 THE MARSHAL: We're going to [indiscernible] this portion of
25 the courtroom. [Indiscernible] to do this, so just leave your boxes and your

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EXHIBIT 3

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

AARON MORGAN,
Plaintiff,

vs.

DAVID LUJAN
Defendant.

CASE#: A-15-718679-C
DEPT. VII

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT
JUDGE

MONDAY, APRIL 9, 2018
RECORDER'S TRANSCRIPT OF HEARING
CIVIL JURY TRIAL

APPEARANCES:

For the Plaintiff: BRYAN BOYACK, ESQ.
 BENJAMIN CLOWARD, ESQ.

For the Defendant: DOUGLAS GARDNER, ESQ.
 DOUGLAS RANDS, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Las Vegas, Nevada, Monday, April 9, 2018

2 THE COURT: Good morning, Mr. Rands. How was your
3 weekend? It's Monday.

4 MR. RANDS: Come on. It's Monday during trial. That's how
5 my weekend was. I apologize, Your Honor. I just got a call from Mr.
6 Gardner. He's almost here, but --

7 THE COURT: All right. Do you have your witness?

8 MR. RANDS: Dr. Sanders is sitting in the --

9 THE COURT: Excellent.

10 MR. RANDS: I apologize I wasn't here Friday afternoon. I had
11 a matter in Reno I had to take care of. But did we get a complete copy of
12 the jury instructions?

13 MR. CLOWARD: Yes.

14 MR. RANDS: The complete set.

15 MR. CLOWARD: Yes.

16 THE COURT: Yes.

17 MR. RANDS: Because there was those couple of additions.

18 MR. CLOWARD: Yeah.

19 THE COURT: Yeah. But we got -- Mr. Gardner should have it,
20 but if you don't, do you need another one?

21 MR. RANDS: Did that include the jury forms, the verdict forms?

22 THE COURT: No. Oh, no. I forgot to ask Sylvia to do that.

23 No. I'll get those right now.

24 MR. RANDS: Okay. Thank you. I was working off the last
25 greatest set, but I'm sure it's not the last one because I didn't have the new

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2

one. If Gardner has them, I'll grab them from him.

THE COURT: We'll get you a new one.

3 MR. CLOWARD: And then, Your Honor, I was hoping to have
4 Dr. Sanders instructed outside the presence of what he's allowed to talk
5 about and what he's not allowed to talk about. His report handed in 2016.
6 We've never gotten a supplemental report. He also never reviewed the films
7 in the case. He specifically set out in his report, he said, hey, I'd like to see
8 the films. Those were never provided, so we never did a supplement. So
9 anything past 2016, I don't think would be appropriate for him to discuss.
10 Additionally, he never discussed the second car crash and so any mention
11 of that I think would be off limits as well. So I was hoping that --

12 THE COURT: All right. That's fine.

13 MR. CLOWARD: Okay.

14 THE COURT: Can the doctor come in? He doesn't have to
15 come all the way up. Good morning. How are you? So I just wanted to
16 touch base with you before we call you to testify. As I understand it, your
17 last report was sometime in 2016.

18 THE WITNESS: I think so, yes.

19 THE COURT: Okay. And you never addressed -- there was
20 some subsequent accident that was never addressed by you.

21 THE WITNESS: Correct.

22 THE COURT: Okay. So just we just need to make sure that
23 your testimony is limited to the things that you put in your report and not
24 anything that you've learned after that's not in the report.

25 THE WITNESS: Correct. In my report, I think the patient did

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1 mention there was a subsequent motor vehicle accident and he said he was
2 fine and I never pursued that.

3 THE COURT: All right. So, anything else, Mr. Cloward?

4 MR. CLOWARD: Okay. No. I just wanted to make sure that
5 the doctor was aware of that.

6 THE COURT: Great. Sir, if you want to just have a seat right
7 here we're going to bring the jury in and then we'll have you come up to the
8 stand once they're in. Just wherever, wherever you like.

9 MR. RANDS: Mr. Gardner just texted me. He's in the elevator,
10 so he'll be here.

11 THE COURT: Good. In 10 or 15 minutes he'll be here.

12 MR. RANDS: Ten or fifteen minutes, exactly, the elevators
13 here.

14 [Pause]

15 MR. GARDNER: Your Honor, I'm sorry.

16 THE COURT: This one's for Mr. Gardner.

17 All right. Can you bring in the jury? All right. Mr. Rands, here's
18 your jury instructions.

19 MR. RANDS: Thank you, Your Honor.

20 THE COURT: Take a look and see if -- will you guys look at
21 that verdict form? I know it doesn't have the right caption. I know it's just
22 the one we used the last trial. See if that looks sort of okay.

23 MR. RANDS: Yeah. That looks fine.

24 THE COURT: I don't know if it's right with what you're asking
25 for for damages, but it's just what we used in the last trial which was similar

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sort of.

THE MARSHAL: Please rise for the jury.

[Jury in at 9:13 a.m.]

THE COURT: We're back on the record in case number 8718679, Morgan v. Lujan. [indiscernible] Counsel and parties. Good morning, everyone. I hope you had a good weekend.

Mr. Gardner and Mr. Rands, if you'll please call your next witness.

MR. GARDNER: Yes, Dr. Sanders.

THE MARSHAL: Doctor, up here, please. If you would remain standing, raise your right hand, and face the clerk, please.

STEVEN SANDERS

[having been called as a witness and being first duly sworn testified as follows:]

THE COURT: Good morning, sir. Go ahead and have a seat, please. And if you'll please state your name and spell it for the record.

THE WITNESS: Steven Sanders, S-T-E-V-E-N, Sanders, S-A-N-D-E-R-S.

THE COURT: Thank you. Whenever you're ready, Mr. Gardner.

DIRECT EXAMINATION

BY MR. GARDNER:

Q Good morning, Doctor.

A Good morning.

Q Thank you for being here sincerely. Why don't you tell the jury

1 MR. GARDNER: Yes.
2 THE COURT: All right.
3 MR. GARDNER: It is.
4 THE COURT: So when we come back we'll be -- do you have
5 any rebuttal witnesses, Mr. Cloward?
6 MR. CLOWARD: No.
7 THE COURT: Great. So when we come back you'll formally
8 rest, we'll read jury instructions, and do closings.
9 MR. BOYACK: We have one thing.
10 THE COURT: All right.
11 MR. BOYACK: On the verdict form we just would like the past
12 and future medical expenses and pain and suffering to be differentiated.
13 THE COURT: Yeah. Let me see.
14 MR. BOYACK: Just instead of the general.
15 THE COURT: That's fine. That's fine.
16 MR. BOYACK: Yeah. That's the only change.
17 THE COURT: That was just what we had laying around, so.
18 MR. BOYACK: Yeah.
19 THE COURT: So you want -- got it. Yeah. That looks great. I
20 actually prefer that as well.
21 MR. BOYACK: Yeah. That was the only modification.
22 THE COURT: That's better if we have some sort of issue.
23 MR. BOYACK: Right.
24 THE COURT: All right. All right, folks.
25 [Recess at 12:31 p.m., recommencing at 1:31 p.m.]

1 THE COURT: We're on the record already?

2 THE CLERK: We're on the record now.

3 THE COURT: Okay. So we're just going to note the Defense
4 objection to instruction number 26, which is an instruction relating to my
5 prior ruling on the motion for summary judgment. And as I understand it, the
6 Defense is not objecting to the accuracy of the instruction, but just the
7 decision that led to the instruction.

8 MR. RANDS: That is correct, Your Honor, and I just wanted to
9 preserve that for the record.

10 THE COURT: All right. Anything you want to say about that,
11 Mr. Cloward or Mr. Boyack?

12 MR. CLOWARD: Just to note that there's been no offer of proof
13 as to what Dr. Sanders would have testified to. He didn't have the
14 opportunity to review those records. He formulated no opinions regarding
15 that, so to the extent that the instruction or the prior ruling is not appropriate,
16 there's been zero evidence submitted to the factfinders that the wrists were
17 not injured, rather the record has indicated that they were. And therefore,
18 you know, we would move -- I mean, if the Court had not already ruled, we
19 would be moving for a directed verdict on that issue right now, but since the
20 Court's already ruled, then we don't need to move for a directed verdict on
21 that issue.

22 THE COURT: All right. Anything else we need to take care of
23 before we bring the jurors in?

24 MR. GARDNER: No, Your Honor. Thank you.

25 MR. CLOWARD: Is there anything you've shown the jurors

Reception

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Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	3/5/2019 1:30 PM PST
Filing Type	Supplement - SUPPL (CIV)
Filing Description	Supplement to Harvest Management Sub LLC's Motion for Entry of Judgment
Filed By	Josephine Baltazar

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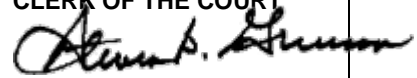
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TAB 35

TAB 35



1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 AARON MORGAN,

6 Plaintiff,

7 vs.

8 DAVID LUJAN, et al.,

9 Defendants.
10
11
12

CASE NO. C-15-718679-C

DEPT. VII

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
14 TUESDAY, MARCH 5, 2019

15 **RECORDER'S TRANSCRIPT OF**
16 **DEFENDANT HARVEST MANAGEMENT SUB LLC'S MOTION**
17 **FOR ENTRY OF JUDGMENT**

18 APPEARANCES:

19 For the Plaintiff:

BENJAMIN P. CLOWARD, ESQ.
BRYAN A. BOYACK, ESQ.
MICAH S. ECHOLS, ESQ.
KATHLEEN A. WILDE, ESQ.

21 For the Defendant Harvest:

DENNIS L. KENNEDY, ESQ.
SARAH E. HARMON, ESQ.
MICHELLE STONE, ESQ.

24 RECORDED BY: RENEE VINCENT, COURT RECORDER
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1 Tuesday, March 5, 2019 - 9:53 a.m.

2
3 THE COURT: Morgan versus Lujan.

4 MR. KENNEDY: Thank Your Honor.

5 THE COURT: Could I get everybody's appearance for the record, please.

6 MR. CLOWARD: Your Honor, Benjamin Cloward on behalf of Aaron
7 Morgan.

8 MR. ECHOLS: Micah Echols here for Plaintiff Aaron Morgan.

9 MR. BOYACK: Bryan Boyack for Plaintiff Aaron Morgan.

10 MS. WILDE: Kathleen Wilde for Mr. Morgan.

11 MR. KENNEDY: Dennis Kennedy and Sarah Harmon on behalf of
12 Defendant Harvest Management, sub LLC. Also present is Michelle Stone, who is
13 general counsel.

14 THE COURT: All right. Good morning. So before we get into this motion, I
15 have a question for all of you. Would it be easier if I -- I know Judge Gonzalez sent
16 it back for this purpose, but I can -- I mean, I can take the case back for all
17 purposes if that's easier for everyone.

18 MR. CLOWARD: We would actually ask that.

19 MR. KENNEDY: Your Honor, we filed an objection to the case coming
20 back for any reason.

21 THE COURT: Right.

22 MR. KENNEDY: So we can't consent to that.

23 THE COURT: Okay. All right. All right.

24 MR. CLOWARD: And, Your Honor, I mean, on that issue, you know, the
25 case law supports that you would be the best person given that you presided over

1 two jury trials, almost a third jury trial.

2 THE COURT: There is a long history with this case.

3 MR. CLOWARD: True.

4 THE COURT: Well, let's -- we'll just start with the motion, and I'll give that
5 some thought. So -- I'm sorry. So, Mr. Kennedy, your motion.

6 MR. KENNEDY: Thank you, Your Honor.

7 THE COURT: Let me start by asking you, so the case is currently in front
8 of the Nevada Supreme Court. I know that you filed a motion with them. Do you
9 think it would be more appropriate to wait until they determine the case is not
10 properly in front of them?

11 MR. KENNEDY: I don't think we have to do that. We talked about doing
12 that, but this is an issue that we can decide now because the motion to dismiss in
13 front of the Nevada Supreme Court is on the ground that there's no final judgment,
14 and the motion that's in front of the Court today is a step on the road to getting a
15 final judgment.

16 THE COURT: Right.

17 MR. KENNEDY: So I think we would just -- we'd just be, in essence,
18 wasting time. I think the Court's going to dismiss and say there's no final judgment,
19 so we would just be back again on the same issue.

20 THE COURT: I have another question for you. Do you know if the settling
21 of jury instructions was transcribed? Because if it was, I could not find it and I
22 could not --

23 MS. WILDE: With the doors closing, I couldn't hear.

24 THE COURT: I was looking for the transcript of the settling of jury
25 instructions, and I could not find that. I don't know if they were ever -- I just couldn't

1 find it. I couldn't find it in what was filed. I believe it was done on the day April -- I
2 want to say that was April 6.

3 MS. HARMON: I don't know if I have a full transcript for that day, but let me
4 look for the appendix.

5 THE COURT: So what was filed that's not in your appendix was -- the
6 original transcripts filed didn't appear to include that, and then I couldn't -- I did not
7 find it in your paperwork.

8 MR. KENNEDY: Yeah. I don't think we included it in --

9 MS. HARMON: No.

10 MR. KENNEDY: -- the standings here.

11 THE COURT: No.

12 MR. KENNEDY: We just included copies of the instructions themselves.

13 THE COURT: Right. Okay.

14 MS. HARMON: And we only attached excerpts in our appendix, so I don't
15 believe we'd have the settling of the jury instructions.

16 THE COURT: I didn't see that. I just saw the instructions themselves. I
17 just wanted to make sure that I didn't find --

18 MR. KENNEDY: Yeah, that's all we attached as an exhibit were the
19 instructions.

20 THE COURT: All right.

21 MR. KENNEDY: The matter before the Court today is really a pretty narrow
22 one, and that's Harvest's -- we call them Harvest Management or Harvest --

23 THE COURT: Right.

24 MR. KENNEDY: -- our motion for the entry of judgment in favor of Harvest
25 and dismissing the claim or claims that were made by the Plaintiff against Harvest.

1 What happened was, that following the jury's verdict, a period of time elapsed, and
2 the Plaintiff then filed a motion with Judge Gonzalez --

3 THE COURT: Right.

4 MR. KENNEDY: -- asking that judgment be entered in favor of the Plaintiff
5 as to the individual Defendant and as to Harvest Management. We opposed that
6 on --

7 MS. HARMON: And she denied their motion.

8 MR. KENNEDY: And she denied that motion. And then you see from the
9 transcript, from that hearing that we attached, I said, well, will that judgment also
10 include a judgment in favor of Harvest dismissing the claims? And she said, no,
11 you have to file another motion, to which I said, sure, okay, we will do that. We
12 filed that motion, and somewhat to our surprise, the opposition to our motion --
13 because we said, look, if you're not going to enter judgment in favor of the Plaintiff
14 against Harvest, then, of course, you ought to enter a judgment in favor of Harvest
15 dismissing the Plaintiff's claims. Makes sense.

16 The response we got from the Plaintiff was, oh, no, this is all Judge
17 Bell's fault because Judge Bell was responsible for the verdict form not making any
18 sense. That came as somewhat of a surprise to us because when you go back
19 through the transcript and you look at the parts of the transcripts and the
20 documents -- and we set this out in excruciating detail in our motion and our
21 reply -- what happened, and then there's no question about it. When -- on the last
22 day the Court said, hey, I have a verdict form that I used in another case, and it
23 might be helpful to you --

24 THE COURT: My recollection is just one of the reasons that I get the
25 transcript of the settling of jury instructions that either no one provided a verdict

1 form or what was provided was just not agreeable to everyone in some way, and I
2 can't recall which of the two that was. I mean, typically, my JEA does the final of
3 the jury instructions and verdict form, so if there are any issues, we certainly can
4 make those corrections. I have never used a verdict form without having all of the
5 lawyers review it.

6 MR. KENNEDY: Well, of course, and that's what you did in this case. And
7 in the motion at page 12, starting at line 21, we quote the transcript where you say,
8 "Will you guys take a look at this verdict form. I know it doesn't have the right
9 caption. I know it's just the one we used in the last trial. See if it looks sort of
10 okay."

11 THE COURT: Right.

12 MR. KENNEDY: And then Mr. Rands says, "Yes, looks fine." And then
13 later on that day, Mr. Boyack says, "Yeah, that's the only change." He suggested a
14 change, and he said, "Yeah, that's the only change." The Court says, "That's just
15 what we had laying around, so." Mr. Boyack says yeah. And then he says again,
16 "Well, that was the only modification," and that was to separate out past and future
17 medicals. So that is the genesis of the verdict form. And then -- of course, now
18 we're hearing the argument, well, this was Judge Bell's fault. They say it twice in
19 their opposition. If Judge Bell hadn't made this mistake -- well, okay.

20 You have lawyers who look at the verdict form, approve it and actually
21 the complaining party now made a change in it, but now they're saying they were
22 shocked and surprised that the verdict form only named the individual Defendant.
23 But if you look, and we set all of this out in detail in the memorandum, at page 14,
24 when the argument -- the final argument, the closing argument is made to the jury,
25 and this is page 14 of our motion, Mr. Boyack says, "Here's the verdict form." And

1 as good lawyers do, he said to the jury, "When you fill this out, here's what you
2 should do. First thing that you will find out is, was the Defendant" -- singular --
3 negligent. The clear answer is yes, Mr. Lujan in his testimony that was read from
4 the stand said that Mr. Morgan had the right-of-way." And then he says at the
5 conclusion of that paragraph, "And then from there, you will fill out this other
6 section, what percentage of fault do you assign each party? Defendant, 100
7 percent. Plaintiff, zero percent." And that's exactly what the jury did.

8 And now they're saying, well, that judgment should also apply against
9 the other Defendant. Well, the other Defendant is nowhere on the jury form. And
10 Judge Gonzalez said, I can't -- and there are no jury instructions that pertain to
11 Harvest, the other Defendant, and there is nothing on the form. In fact, the jury
12 form itself says the individual was 100 percent at fault.

13 Now, the narrow question presented to this Court is after Judge
14 Gonzalez said, look, there's not going to be a judgment entered against Harvest
15 based on everything that occurred. We ask that the Court say in that event, the
16 claims against Harvest should be dismissed, and there should be a judgment
17 entered in Harvest's favor.

18 The only argument that is new here that wasn't made to Judge Gonzalez
19 when she denied their motion is, now it is somehow Judge Bell's fault that the
20 verdict form got messed up, and the provisions from the transcript that I just read to
21 you show that that just isn't the case. The Court said, Here's a form I've used. I
22 know the parties aren't the same. You got to change that. Do you approve this?
23 Yes, with one change, it's all approved. And that being the case, there is no
24 reason that this Court should not enter a judgment in Harvest's favor dismissing the
25 Plaintiff's claims against it. And if the Court has no questions --

1 THE COURT: I don't. Thank you.

2 MR. CLOWARD: Good morning, Your Honor.

3 THE COURT: Good morning, Mr. Cloward.

4 MR. CLOWARD: So the tone and tenor has never been to blame the
5 Court.

6 THE COURT: I understand, Mr. Cloward. I mean, I will say I do think-- I
7 was just trying to pull up the jury instructions. I mean, typically, it is the custom of
8 the Court when we do a caption on a verdict form that it matches identically the
9 caption on the jury instructions.

10 MR. CLOWARD: Correct, and --

11 THE COURT: So I do think there was an error in that regard.

12 MR. CLOWARD: Certainly. And the jury instructions contain the correct
13 caption, so if you look at this matter and if you simply put the first page of the
14 verdict form with the correct caption, then the judgment is against both Defendants.
15 But they want to come in here and take advantage of a clerical, ministerial error.

16 At no point was there ever any attempt to modify the caption, to modify
17 the parties in the case, to suggest that the corporate Defendant should not be
18 included. This was simply Your Honor trying to do everybody -- take one thing off
19 of everybody's plates and say, hey -- and it's on page 107 of the transcript of
20 Friday, April 6th, where the Court says, "Hey, I haven't seen the verdict form. I've
21 had like six car crashes this year. I've got one for your guys." And everybody was
22 grateful for that. Everybody was grateful that the Court took that issue off of our
23 plates along with the other issues that we have. Now they come in here and try
24 and pass on this to try and create this issue.

25 And throughout the brief, I counted on ten different times they claim that

1 he was on break, he was on break, he was on lunch break, on lunch break, ten
2 different times. Well, that's not what the testimony was. The testimony was
3 specifically that he, quote, had just ended his lunch break. So he ended his lunch
4 break and now he's back on the clock.

5 And they try and say, well, you know, there's never this issue of -- you
6 know, there's never this issue of the corporation, and there's no instructions for
7 respondeat superior. The reasons the jurors weren't instructed on that is because
8 that was never a contested issue. This was not a contested issue until appellate
9 counsel gets involved in the case. Never at any point was there ever any
10 argument in the claims notes, in the discovery, during the first trial, during the
11 second trial that he was on some sort of a frolic and detour or on some sort of a
12 lunch break during the time of the collision. The testimony was crystal clear in the
13 first case and the second case, he had finished his lunch; he was back on the
14 clock.

15 Counsel cites to the *Rockwell v. Sun Harbor Budget Suites* case, which
16 is 112 Nev. 1217, and it says, "To prevail on vicarious liability, it must be shown
17 that, one, the actor at issue was an employee; and, two, that the actions
18 complained off occurred when the course -- within the course and scope of the
19 actor's employment."

20 The testimony was crystal clear. We have a bus driver driving a bus at
21 the time of the crash who was employed with the Defendants. In order for them to
22 prevail that this is -- that this is some sort of a frolic and detour, that it was outside
23 the scope, they specifically cited to that case.

24 They say that they -- they have to show or that we -- they're citing to the
25 *Rockwell* case, which is quoting *Prell Hotel*, which says, "That it must be shown

1 that it is independent venture of his own and that it was not committed within the
2 course of the very task assigned to him." Well, I guess what? He is a bus driver
3 driving a bus for this company at the time. This -- I mean, we were shocked. We
4 tried to just stipulate saying to counsel, hey, look, this is a ministerial error. It's
5 clear -- you know, it's clear that this is what happened. They won't agree, so that's
6 why we filed the motion.

7 And all of a sudden, we get this big, giant opposition saying, oh, no, no,
8 no. you know, this was -- he's outside the course and scope. And we're like, are
9 you -- huh? Kind of shocked, like are you really making this argument? You're
10 really going to make this argument.

11 And, you know, the fact of matter is, is pursuant to *Evans v. Southwest*
12 *Gas* -- and this is a direct quote -- "Where undisputed evidence exists concern the
13 employee's status at the time of the tortious act, the issue may be resolved as a
14 matter of law." That is citing to *Molino v. Asher* -- that's 96 Nev. 814 -- and
15 *Connell v. Carl's Air-Conditioning* at 97 Nev. 436. This has never been an issue
16 that he was outside the course and scope of his employment.

17 And they cite to the *Rockwell* case. We met the burden that he was in
18 the course and scope, the very act that he's driving the bus. I mean, I don't know
19 what else to say, I mean, Your Honor, the fact that we give the jury instruction on
20 the corporations.

21 And the Court was correct, I didn't see any settling of the instructions
22 that I read, but I did read the settling of the instructions in the first case. And,
23 specifically, the Defense points out, the Court says, "You know, the corporations" --
24 and it was referring to Instruction 17 at the time; they were renumbered. But the
25 Court says, "I don't know how this snuck in here," and all of the parties -- I jump up,

1 Mr. Boyack jumps up, Mr. Rands jumps up. Everybody says, no, there's two
2 Defendants. There's a -- and then the Court says, oh, yeah, I'm mistaken, I'm sorry
3 about that. We're going to give that instruction.

4 That instruction is carried over to the next case. It's given as Instruction
5 Number 5. Well, if this guy is not on the job, if this guy is not in the course and
6 scope of his employ, why isn't there a directed -- a motion for directed verdict after
7 the close of our evidence? You know. Why is it that they lie and wait for this
8 ministerial action?

9 And, again, all the Court has to do is take the first page of the caption
10 from the jury instructions and supplant that for the -- for the verdict form because
11 there's no text on the verdict form. It's just a caption. Swap those two, and guess
12 what, the judgment is against both Defendants, but they're trying to take advantage
13 of this.

14 And, additionally, Your Honor, the singular versus plural argument
15 saying, hey, look, you know, it's only against one Defendant, well, there are also
16 instructions that talk about both Defendants, specifically the insurance instruction.
17 The insurance instruction says you can't consider whether either Defendants,
18 plural, have insurance. Again, this is just a tactical maneuver to try and avoid
19 responsibility in this case. It was never a bona fide issue that was ever, ever
20 raised by anyone during the course of this, and that's why there was not a specific
21 instruction on respondeat superior because it was not an issue. Everyone agreed.

22 Even Ms. Jansen, when she took the stand, the 30(b)(6) for Harvest,
23 and she gives her testimony, never once did she say, well, you know what, the guy
24 wasn't on the job. We asked her, you know, who's at fault for this, and why are
25 they at fault? Well, your driver was at fault because he should've seen the bus.

1 That was the singular thing that she said, is that your driver, Mr. Morgan, was at
2 fault for causing this crash because he wasn't -- he didn't avoid the crash. Yet now
3 they want to come in and reinvent the wheel and say, well, you didn't present this
4 and you didn't present -- we didn't have to present that because it wasn't disputed.

5 Thank you, Your Honor. Do you have any specific questions?

6 THE COURT: No, I don't. Thank you.

7 MR. CLOWARD: Thanks.

8 THE COURT: Mr. Kennedy?

9 MR. KENNEDY: I just have a couple points, Your Honor.

10 THE COURT: Sure.

11 MR. KENNEDY: First, the argument is made, well, if you just change the
12 caption on the verdict form, the problem's solved. That doesn't do it.

13 THE COURT: Right.

14 MR. KENNEDY: Okay? The verdict form itself pertains to one Defendant,
15 and it pertains to a Defendant who is negligent, and those are the jury instructions.
16 There are no -- there's nothing on the jury -- on the verdict form that pertains to
17 another Defendant. And if they did intend to put two Defendants on the verdict
18 form, you have to apportion fault between those two Defendants, and that's not on
19 here, so -- I mean, changing the caption doesn't do it. The argument that --

20 THE COURT: Well, I mean, it's true, vicarious liability typically don't find
21 fault between defendants, right? I mean, I understand what you're saying and I
22 understand that there's an issue with the verdict, but the way this case was
23 presented by both sides, there was really never any dispute that this was an
24 employee in the course and scope of employment. It was never an issue in the
25 case.

1 MR. KENNEDY: Actually, there was no evidence substantively presented
2 by the Plaintiff. What the employee -- what the evidence on the employee was was
3 he was returning from his lunch break. He had just eaten lunch and was returning.
4 And, of course, Nevada has the coming and going rule. Okay. He had no
5 passengers in the bus. He'd gone to eat lunch on his lunch break. That's why we
6 will -- so he's not in course and scope of his employment at that point. That is
7 why --

8 THE COURT: I mean, that wasn't an affirmative defense raised in the
9 answer that -- I mean, I don't recall that issue.

10 MR. KENNEDY: And there is no claim in the complaint for vicarious
11 liability. It's negligent entrustment.

12 THE COURT: It's like vicarious liability and negligent entrustment is the
13 third one?

14 MR. BOYACK: Yeah, that's --

15 MR. KENNEDY: But this is -- this is all -- every one of these arguments,
16 Your Honor, was made to Judge Gonzalez, and she says, if you want to make
17 these claims, you have to have some jury instructions. You have to have a verdict
18 form that has a jury's finding of liability in it. We don't have any of that.

19 THE COURT: I understand, Mr. Kennedy. I'm just telling you my
20 recollection, having dealt with this case -- and this was -- I mean, for whatever
21 reason, one of those cases that is extraordinarily full of holes. We had, you know,
22 a mistrial. We had a failed start of the trial. We had a number of motions.

23 There were a number of issues with this case that made it complicated
24 and one that sticks out in my memory a bit more than others, and I do -- I mean, I
25 just don't recall that there was ever any -- anything raised as a concern. It wasn't

1 an issue.

2 MR. KENNEDY: Because the Plaintiff didn't present enough evidence on it
3 to really merit any defense other than the driver saying, I was on my lunch break
4 and returning, and that's the coming and going rule. He wasn't driving passengers.
5 He had nobody in the bus. He said, I had gone to this park, was eating lunch and I
6 was returning.

7 And then what we do is we get to the closing argument. There is no part
8 of the closing argument whatsoever on any liability for Harvest. Nobody says
9 anything in the closing argument. In fact, in the closing argument, it is obvious that
10 the focus is on the individual Defendant because the Plaintiff's lawyer stands up
11 with the verdict form and says, "The Defendant is 100 percent negligent." That's
12 Mr. Lujan. And that's what they say to the jury, and the jury comes back and finds
13 that.

14 Now they're saying, well, you know, we think there was another
15 defendant who should've been found liable to some degree, and we think that the
16 jury would've done that had we proved it, had we argued it, had we had a verdict
17 form that was proper. All of those arguments were rejected by Judge Gonzalez.
18 She said, "I am denying the motion for entry of judgment against Harvest." There's
19 no evidence, there's no argument, there's no jury instructions on any kind of
20 derivative liability at all. It's just not there.

21 And to say, well, it wasn't contested, so the jury must have found that,
22 even though they didn't find it, is absurd, and I don't -- I don't think the Court really
23 at this point can go behind the evidence and the verdict form and say that the jury
24 probably would have found something other than it did if things had been done
25 properly.

1 Because the focus and the closing argument -- in fact, the focus of the
2 whole case was on the individual, and the verdict form was examined and
3 prepared, and it focused only on the individual. There is no mention in that verdict
4 form of the other Defendant, and there are no jury instructions on liability for the
5 other Defendant. To say we have a stock instruction that says treat corporations
6 like individuals, that doesn't get you anywhere at all.

7 And so based on what Judge Gonzalez did and the narrow issue that's
8 presented to Your Honor, I think it's clear that Your Honor should enter a judgment
9 in favor of the Harvest Defendant, dismissing the Plaintiff's claim or claims against
10 it. And I'm done if the Court has no questions.

11 THE COURT: No, I don't. Mr. Cloward, anything else?

12 MR. CLOWARD: Yes. Your Honor, Rule 54(b) indicates that this Court
13 does not have to consider anything that Judge Gonzalez did, and I think Judge
14 Gonzalez recognized after this second motion was filed, but you know what, it's
15 probably appropriate to send this back to Judge Bell who presided over two jury
16 trials and a failed third start and let her address these issues.

17 So we're asking that the Court either deny Harvest's motion and enter
18 judgment against our client. If the Court wants us to file a different motion, a
19 separate motion for reconsideration so the Court can apply 42, NRCP 42, we're
20 happy to do that. But at the end of the day, the Court is correct in the recollection;
21 this was never a contested issue until appellate counsel got involved. It is -- it is
22 plain and simple.

23 Further, the *Price v. Sennott* case, 85 Nev. 600, "A party cannot gamble
24 on the jury verdict and then later, when displeased with the verdict, challenge the
25 sufficiency of the evidence to support it." Mr. Kennedy is saying, well, Plaintiff

1 didn't do this and Plaintiff didn't do that and Plaintiff didn't do all these things. Well,
2 the reason we didn't do these things is because this was never a bona fide issue.
3 It never was. Yet they're trying to seize on this ministerial clerical error, which was
4 done as a courtesy to the parties, and it's really unfair. Thank you, Your Honor.

5 THE COURT: All right. So I want to look at -- I want to look at the
6 transcripts related to the settling of the jury instructions. I found the old one, and I
7 just need to find -- I can't remember if we just used the same ones or if there was
8 additional discussion of the settling of the instructions after, but I wasn't able to find
9 that.

10 MR. KENNEDY: Your Honor, we have the full transcript, so we'll look for it,
11 too, and file them.

12 THE COURT: Yeah. I just -- the transcripts are filed. I just -- I couldn't -- I
13 went through them and I couldn't find that part, you know, that -- Mr. Cloward
14 jogged my memory, that we had both of the settling of instructions in the first trial.
15 He at least remembered, but I didn't see that either. I just want to go through those
16 before I make any decision here because I want to see what the discussions were
17 relative to what the instructions were or were not included.

18 And so I'm going to set a status check. I'll set it two weeks just to give
19 me an opportunity to go through them. Don't -- you don't need to come back to
20 court. I'm just doing that for my own benefit. And then I will issue a written
21 decision once I've had the opportunity to review them. If I have additional
22 questions after that, then I will let you know.

23 MR. KENNEDY: Okay.

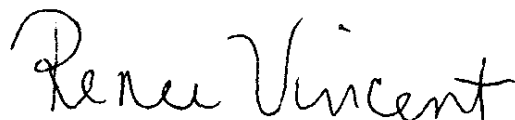
24 THE COURT: All right. Thank you.

25 MR. KENNEDY: Sounds good.

1 MR. CLOWARD: Thank you, Your Honor.

2 [Proceeding concluded at 10:29 a.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 _____
25 Renee Vincent, Court Recorder/Transcriber

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2437

TAB 36

TAB 36

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, INDIVIDUALLY,
Appellant,

vs.

DAVID E. LUJAN, INDIVIDUALLY;
AND HARVEST MANAGEMENT SUB
LLC, A FOREIGN LIMITED-LIABILITY
COMPANY,

Respondents.

No. 77753

FILED

MAR 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING MOTION TO DISMISS

Respondent Harvest Management Sub, LLC (Harvest), has filed a motion requesting this court to dismiss this appeal for lack of jurisdiction. Appellant opposes the motion, and Harvest has filed a reply. We deny the motion. This denial is without prejudice to respondent Harvest's right to renew the motion, if necessary, upon completion of settlement proceedings.

It is so ORDERED.¹

 , C.J.

cc: Ara H. Shirinian, Settlement Judge
Richard Harris Law Firm
Marquis Aurbach Coffing
Bailey Kennedy
Rands, South & Gardner/Henderson

¹Appellant's conditional counter-motion to postpone or extend time for consideration of motion to dismiss, which Harvest opposes, is denied as moot.

Reception

From: efilings@nvcourts.nv.gov
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Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Mar 07 2019 03:03 p.m.

Case Title: MORGAN VS. LUJAN
Docket Number: 77753
Case Category: Civil Appeal

Document Category: Filed Order Denying Motion to Dismiss. Respondent Harvest Management Sub, LLC, has filed a motion requesting this court dismiss this appeal for lack of jurisdiction. We deny the motion. This denial is without prejudice to respondent Harvest's right to renew the motion, if necessary, upon completion of settlement proceedings. fn1 [Appellant's conditional counter-motion to postpone or extend time for consideration of motion to dismiss, which Harvest opposes, is denied as moot.] (SC).

Submitted by: Issued by Court
Official File Stamp: Mar 07 2019 02:36 p.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Order Denying Motion to Dismiss. Respondent Harvest Management Sub, LLC, has filed a motion requesting this court dismiss this appeal for lack of jurisdiction. We deny the motion. This denial is without prejudice to respondent Harvest's right to renew the motion, if necessary, upon completion of settlement proceedings. fn1 [Appellant's conditional counter-motion to postpone or extend time for consideration of motion to dismiss, which Harvest opposes, is denied as moot.] (SC).

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

2439

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

Benjamin Cloward
Douglas Gardner
Joshua Gilmore
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TAB 37

TAB 37

A-15-718679-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

March 14, 2019

A-15-718679-C Aaron Morgan, Plaintiff(s)
vs.
David Lujan, Defendant(s)

March 14, 2019 2:00 PM Minute Order

HEARD BY: Bell, Linda Marie **COURTROOM:** No Location

COURT CLERK: Kimberly Estala

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- For convenience, case A-15-718679-C shall be transferred to Department 7 effective immediately pursuant to EDCR 1.30(b)(15).

CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered for Odyssey File and Serve. //ke 03/14/19

PRINT DATE: 03/14/2019

Page 1 of 1

Minutes Date: March 14, 2019

2441

Reception

From: efilngmail@tylerhost.net
Sent: Thursday, March 14, 2019 4:06 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-15-718679-C, Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s) for filing Service Only, Envelope Number: 3991718

Notification of Service

Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Envelope Number: 3991718



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Filing Details

Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	3/14/2019 4:05 PM PST
Filing Type	Service Only
Filing Description	Minute Order
Filed By	Kimberly Estala

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TAB 38

TAB 38

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON M. MORGAN, INDIVIDUALLY,
Appellant,
vs.
DAVID E. LUJAN, INDIVIDUALLY; AND
HARVEST MANAGEMENT SUB LLC, A
FOREIGN LIMITED-LIABILITY
COMPANY,
Respondents.

No. 77753

FILED

APR 01 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

SETTLEMENT PROGRAM STATUS REPORT

A mediation session was ~~held~~ in this matter on 8/13, 2019.

will be held
I make the following report to the court:

(check one box)

- ☐ The parties have agreed to a settlement of this matter.
- ☐ The parties were unable to agree to a settlement of this matter.
- ☒ The settlement process is continued as follows:

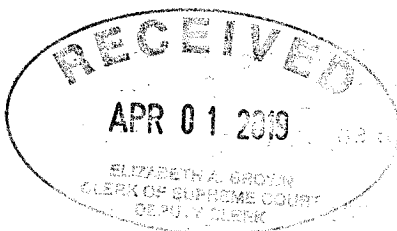
Date: 8/13/19 Time: 10:00 AM

Location: Bailey Kennedy

☒ Other: _____

Additional Comments: The Settlement Judge requests 90 days
beyond deadline to submit final report.

[Signature]
Settlement Judge



2444

Reception

From: efiling@nvcourts.nv.gov
Sent: Monday, April 1, 2019 3:21 PM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in MORGAN VS. LUJAN, No. 77753

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Apr 01 2019 03:20 p.m.

Case Title: MORGAN VS. LUJAN
Docket Number: 77753
Case Category: Civil Appeal

Document Category: Filed Interim Settlement Program Report. The settlement conference is continued to the following date: August 13, 2019, at 10:00 am. The Settlement Judge requests 90 days beyond deadline to submit final report. (SC).

Submitted by: Issued by Court

Official File Stamp: Apr 01 2019 02:54 p.m.

Filing Status: **Accepted and Filed**

Docket Text: Filed Interim Settlement Program Report. The settlement conference is continued to the following date: August 13, 2019, at 10:00 am. The Settlement Judge requests 90 days beyond deadline to submit final report. (SC).

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

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2445

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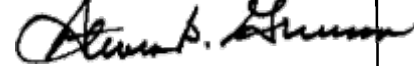
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TAB 39

TAB 39



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 AARON M. MORGAN, INDIVIDUALLY,

6 Plaintiff,

7 vs.

8 DAVID E. LUJAN, individually, HARVEST
9 MANAGEMENT SUB LLC; a Foreign-Limited Liability
10 Company; DOES 1 THROUGH 20; ROE BUSINESS
11 ENTITIES 1 THROUGH 20, inclusive Jointly and
12 Severally,

13 Defendants.

Case No. A-15-718679-C

Dept. No. VII

14 DECISION AND ORDER

15 Defendant Harvest Management Sub LLC filed a Motion for Entry of Judgment because
16 Aaron Morgan failed to properly pursue his claim of vicarious liability against them and abandoned
17 his claim. This Motion followed a similar Motion for Entry of Judgment filed by Mr. Morgan that
18 Judge Gonzalez denied. Mr. Morgan filed a Motion for Attorney Fees and Costs, arguing Harvest
19 should pay attorney fees as a result of Harvest causing a mistrial. Upon review of the Motions,
20 Oppositions, and Replies, as well as in consideration of the points made in oral argument, I find that
21 I am without jurisdiction to render a decision on the Motion for Entry of Judgment and will stay
22 proceedings until the appeal pending is resolved. I certify that should the Supreme Court remand the
23 case back to me, I will recall the jury and instruct them to consider whether their verdict applied to
24 Harvest. For the fees, I find that it would be a waste of judicial economy to rule on the fees at this
25 point, and will defer judgment until the Supreme Court makes its decision.

26 **I. Factual and Procedural Background**

27 This case involves a car accident in which David Lujan, a driver for Harvest, struck Mr.
28 Morgan. Mr. Morgan sustained injuries as a result of this accident. Mr. Morgan filed a Complaint on
May 05, 2015. Mr. Morgan levied several causes of action against the Defendants. Mr. Morgan
claimed negligence and negligence per se against David Lujan and vicarious liability/ respondeat

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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APR 05 2019

CLERK OF THE COURT

1 superior against Harvest. Mr. Morgan claimed that Mr. Lujan was acting in the scope of his
2 employment with Harvest when he caused an accident to occur, injuring Mr. Morgan.

3 On June 16, 2015, the Defendants filed an Answer to Mr. Morgan's Complaint. The Answer
4 denied the allegation that Mr. Lujan was acting in the course and scope of his employment at the
5 time of the accident. Harvest further denied that Mr. Lujan was incompetent, inexperience, or
6 reckless in the operation of the vehicle, that Harvest knew or should have known Mr. Lujan was
7 incompetent, inexperienced, or reckless in the operation of the vehicle, that Mr. Morgan was injured
8 as a proximate cause of Harvest's negligent entrustment of the vehicle to Mr. Lujan, and that Mr.
9 Morgan suffered damages as a direct and proximate result of Harvest's negligent entrustment.
10 Defendants were represented by Douglas J. Gardner, Esq. of Rands, South, & Gardner who
11 represented both Defendants throughout the discovery process.

12 On April 24, 2017, the parties appeared for a jury trial. The Defendant advised me that Mr.
13 Lujan had been hospitalized. I continued this jury trial. On November 6, 2017, the parties conducted
14 a second jury trial. This trial ended in a mistrial as a result of the Defendants inquiring about the
15 pending DUI charge against Mr. Morgan. On April 2, 2018, the parties held the second trial. During
16 this trial, the parties failed to provide a verdict form. Instead, the parties agreed to use a verdict form
17 that had been used in a prior trial and was modified by my assistant. I did not catch, nor did any of
18 the four attorneys, that the verdict form inadvertently omitted Harvest from the caption. The form
19 also designated a singular "Defendant" instead of referring to multiple Defendants. Using this
20 flawed form, the jury awarded Mr. Morgan \$2,980,000.00 in damages. I did not make any legal
21 determination regarding Harvest. I also do not recall Harvest contesting vicarious liability during
22 any of the three trials or during the two years proceeding.

23 On July 30, 2018, Mr. Morgan filed a Motion for Entry of Judgment requesting the Court
24 enter a written judgment against both Lujan and Harvest Management. The Court ruled that the
25 inconsistencies in the jury instructions and the special verdict form were not enough to support
26 judgment against Harvest. Mr. Morgan appealed on December 18, 2018. This matter is currently
27 pending before the Nevada Supreme Court.
28

1 On December 21, 2019, Harvest filed a Motion for Entry of Judgment based on the decision
2 made on Mr. Morgan's Motion for Entry of Judgment. Harvest argues that this decision warrants an
3 immediate judgment in its favor. Mr. Morgan filed an opposition and Countermotion on January 15,
4 2019. Harvest filed a Reply on January 23, 2019. I heard oral arguments on March 05, 2019.

5 Mr. Morgan filed a Motion for Attorney's Fees and Costs on January 22, 2019. Harvest filed
6 an Opposition on February 22, 2019. Mr. Morgan filed a Reply on March 08, 2019. I heard oral
7 arguments on March 19, 2019.

8 II. Discussion

9 Harvest makes the following arguments in support of its Motion:

10 (1) Mr. Morgan voluntarily abandoned his claim against Harvest and did not present any
11 claims against Harvest to the jury for determination.

12 (2) Harvest is entitled to judgment in its favor as to Mr. Morgan's claim for either negligent
13 entrustment or vicarious liability.

14 Before I can address these arguments, I must first address whether I have jurisdiction to hear
15 this case. The pending appeal by Mr. Morgan may affect my ability to adjudicate this matter.

16 A. The pending appeal by Mr. Morgan divests this Court of jurisdiction.

17 The Supreme Court of Nevada held that a "timely notice of appeal divests the district court
18 of jurisdiction" to address issues pending before the Nevada Supreme Court. Mack-Manley v.
19 Manley, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006). I may only adjudicate "matters that are
20 collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's
21 merits." Id. at 855.

22 Mr. Morgan argues that the pending appeal divests this Court of jurisdiction to hear matters
23 related to the Order Denying Mr. Morgan's Motion for Entry of Judgment, the Jury Verdict, or
24 related substantive issues. Harvest argues that the Order denying the Motion for Entry of Judgment
25 is not a final order because there is an issue remaining against Harvest. Harvest concludes that if the
26 Order denying the motion for Entry of Judgment is not a final order, the Supreme Court does not
27 have jurisdiction.
28

1 The Supreme Court could find that Mr. Morgan's appeal has merit and may reverse the
2 Order granting the Motion for Entry of Judgment. This would grant Mr. Morgan a judgment against
3 Harvest and render Harvest's current Motion moot. Thus, this Motion is not collateral and
4 independent. This Motion directly stems from Judge Gonzalez denying Mr. Morgan's Motion for
5 Entry of Judgment.

6 Substantively, I agree with Harvest that the flawed verdict form used at trial does not support
7 a verdict against Harvest. Pursuant to Huneycutt v. Huneycutt, I certify that if this case was
8 remanded, I would recall the jury from the subject trial and instruct them to consider whether their
9 verdict applied to Harvest. 94 Nev. 79, 575 P.2d 585 (1978).

10 **B. As the pending Supreme Court decision impacts liability, I am deferring judgment**
11 **until the resolution of the appeal on the Motion for attorney fees.**

12 I have jurisdiction to resolve attorney fees. I find that it is against the interest of judicial
13 economy to resolve the issue at this time. Mr. Morgan seeks \$47,250.00 in fees and \$20,371.40 in
14 costs for the mistrial. Mr. Morgan also seeks \$42,070.75 for costs incurred in the completed jury
15 trial. While the pending Supreme Court decision does not directly consider these pending fees and
16 costs, the decision will impact who could be responsible for some of these fees and costs. In
17 addition, the parties seemed to indicate that, depending on the Supreme Court decision, further
18 Motions for Attorney Fees could be warranted. Judicial economy would best be served if all requests
19 for fees and costs were handled at the same time after all variables are accounted for.

III. Conclusion

The current Motion in front of me directly relates to the appeal pending before the Supreme Court. I am without jurisdiction to adjudicate this matter. I am staying proceedings until the appeal is resolved and certify that if this were remanded back to me, I would recall the jury and instruct them to consider whether Harvest is liable. I am also deferring judgment on attorney fees and costs. The parties may place this back on calendar when the Nevada Supreme Court renders its opinion.

DATED this day of April 2, 2019.



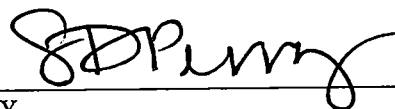
LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
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Dennis L. Kennedy Bailey * Kennedy c/o Dennis L. Kennedy 8984 Spanish Ridge Avenue Las Vegas, NV 89148	Counsel for Harvest Management Sub LLC
Douglas J. Gardner 1055 Whitney Ranch Dr., Suite 220 Henderson, NV 89014	Counsel for David Lujan



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A718679 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: ~~03/27/2018~~
4/2/18

2452

From: efilingmail@tylerhost.net
Sent: Friday, April 5, 2019 3:48 PM
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Notification of Service

Case Number: A-15-718679-C
Case Style: Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Envelope Number: 4104693



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Case Number	A-15-718679-C
Case Style	Aaron Morgan, Plaintiff(s)vs.David Lujan, Defendant(s)
Date/Time Submitted	4/5/2019 3:46 PM PST
Filing Type	Decision and Order - DAO (CIV)
Filing Description	Decision and Order
Filed By	Mary Anderson

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